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# *Procurement Integrity*

*What You Need to Know As  
A Federal Employee*

*U.S. Department of Energy  
Office of Procurement & Assistance Management*



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## What You Need to Know As A Federal Employee

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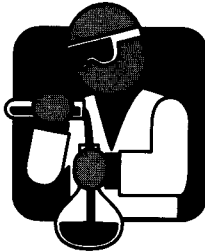


### What is Procurement Integrity?

The Department of Energy, like most federal agencies, purchases many products and services from the private sector. Certain laws govern the procurement process and the manner in which federal and contractor personnel conduct business with each other. One of these statutes is Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), often referred to as the *Procurement Integrity Act*. This Act prohibits certain activities by personnel involved in the procurement process. The Federal Acquisition Regulation, at Section 3.104, sets forth the regulations that implement the provisions of the Procurement Integrity Act.

The Procurement Integrity Act addresses various activities by:

- Present Federal employees.
- Certain former Federal employees.
- Bidders and Offerors.
- Other personnel involved in agency procurements and contracts.



Significant revisions to the Procurement Integrity Act were effective on January 1, 1997, as a result of the Clinger-Cohen Act of 1996. These revisions deal with activities in four major areas:

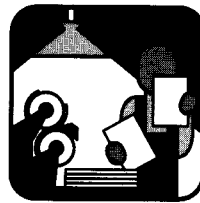
- Disclosing bid, proposal or source selection information.
- Obtaining bid, proposal or source selection information.
- Accepting compensation from certain contractors after leaving the Government.
- Discussing non-federal employment with bidders or offerors.

This brochure is intended to act as a primer for all federal employees on issues related to Procurement Integrity. As such, not all statutory or regulatory details are included here. Employees should consult their appropriate local ethics officials to discuss detailed information and procedures in those areas that may affect them personally.

All federal employees should also be familiar with other statutes that address standards of conduct issues. The Office of the Assistant General Counsel for General Law at Headquarters or the local ethics official in the field can provide further information addressing standards of conduct, including information on:

- Avoiding conflicts of interest.
- Avoiding making Government decisions without authority.
- Inappropriate disclosure of information.
- Taking bribes or accepting certain gratuities.
- Using an official Government position to advance personal interests.
- Maintaining inappropriate financial interests.

### What Activities are Prohibited?



#### I. Disclosing Procurement Information

For competitive procurements, the personnel identified below shall not, other than prescribed by law, knowingly disclose contractor bid or proposal information, or source selection information, before award of a contract to which the information relates.

- A present or former official of the United States.
- A person who is acting for, or has acted for or on behalf of, the United States with respect to a Federal agency procurement.
- A person who is advising, or has advised, the United States with respect to a Federal agency procurement.

The following information *may not be disclosed* if it hasn't already been disclosed to the public:

Contractor bid or proposal information, including:

- Cost or pricing data, including indirect costs and direct labor rates.
- Proprietary information about manufacturing processes, operations, or techniques identified as such by contractors.
- Information identified by a contractor as "contractor bid or proposal information."

Source selection information, which is information that is prepared for use by a Federal agency for the purpose of evaluating a bid or proposal, including:

- Bid prices.
- Proposed costs or prices.
- Source selection plans.
- Technical evaluation plans.
- Technical and cost or price evaluations of proposals.
- Competitive range determinations.
- Rankings of bids, proposals, or competitors.
- Reports and evaluations of source selection panels, boards, or advisory councils.
- Other "source selection information."



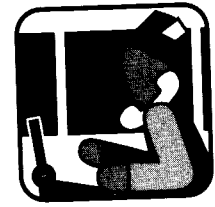
- Personally made any of the following decisions on behalf of the Federal agency:

To award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order over \$10,000,000.

To establish overhead or other rates for a contractor that are valued in excess of \$10,000,000.

To approve a contract payment over \$10,000,000.

To pay or settle a claim in excess of \$10,000,000.

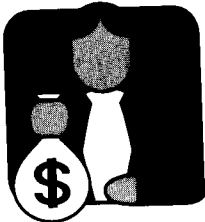


This post-employment prohibition does not apply to divisions or affiliates of a contractor that do not produce the same or similar products or services as the entity of the contractor referred to above.

## II. Obtaining Procurement Information

For competitive procurements, a person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information, or source selection information, before the award of a contract to which the information relates. This prohibition applies to the same type of information identified above.

## III. Accepting Compensation from a Contractor



A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor for a period of one year after this official:

- Served, at the time of selection of the contractor or the award of the contract, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team. This applies to contracts over \$10,000,000.
- Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000.
- Two DOE employees who have been friends for many years are talking about their work assignments over lunch one afternoon. One of the employees is a Contracting Officer's Representative (COR) who is participating in the selection process on a competitive procurement. When asked how the evaluations are proceeding, the COR knows not to discuss the subject since disclosure of source selection information is prohibited.
- A DOE Engineer responsible for drafting a statement of work on a competitive solicitation receives a telephone call from a contractor's business manager who asks when the solicitation will be released. During the conversation, the business manager mentions that a position will be opening in his firm for a Project Engineer and that the DOE employee would be highly qualified for the job. The DOE employee realizes that a Procurement Integrity issue has been raised, rejects the job offer, and immediately notifies her supervisor and agency ethics official of the contact with the contractor.
- An environmental engineer served on a source selection board that evaluated competitive proposals for a recently awarded contract totaling \$11M. The engineer is considering retiring from the Government to do consultant work for environmental contractors. Under the Procurement Integrity Act, he is barred from accepting any compensation from the contractor who was awarded that particular contract for a period of 1 year after his work ended on the evaluation board.

## Illustrations

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## **What About Discussing Employment with Contractors?**

If you are an agency official who is participating personally and substantially in a procurement valued in excess of the simplified acquisition threshold of \$100,000, and you contact or are contacted by a bidder or offeror in that procurement regarding possible non-Federal employment, you are required to:

- Promptly report the contact in writing to your supervisor and your agency ethics official, and
- Either reject the possibility of non-Federal employment or disqualify yourself in writing from further involvement in that procurement, until authorized to resume participation.

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## **What are the Penalties for Violations?**

Engaging in conduct that violates the Procurement Integrity Act may result in criminal, civil, and/or administrative penalties, including:

**Criminal Penalties that apply to improper disclosure or obtaining of contractor bid or proposal information or source selection information**

- Imprisonment of not more than 5 years and/or a fine.

### **Civil Penalties**

- Up to \$50,000 per violation plus twice the amount of compensation an individual received or offered for the prohibited conduct.
- Up to \$500,000 per violation plus twice the amount of compensation an organization received or offered for the prohibited conduct.



### **Administrative Actions**

- Cancellation of the procurement.
- Disqualification of an offeror.
- Rescission of the contract.

- Suspension or debarment of the contractor.
- Initiation of an adverse personnel action.
- Any other action in the best interest of the Government

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## **Who Can You Contact for More Information on Procurement Integrity?**

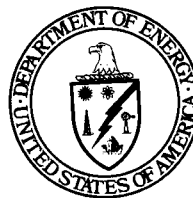
- New employees will be briefed by the Office of Personnel when they first come on board.
- Procurement offices provide specific information for any acquisitions in which you are involved.
- The Assistant General Counsel for Procurement and Financial Assistance, GC-61, (or local procurement Counsel at field offices) provides advice on questions addressing disclosure of contractor bid or proposal information or source selection information.
- The Assistant General Counsel for General Law, GC-80, (or local ethics Counsel at field offices) provides ethics advice on specific conduct covered by the Procurement Integrity Act.

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## **Where Can You Read More About Procurement Integrity?**

- Title 41 of the United States Code, Chapter 423.
- The Federal Acquisition Regulation (FAR), Section 3.104.
- The Department of Energy Acquisition Regulation (DEAR), Section 903.104.

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